

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Appeal (C) No.787 of 2013**

- United India Insurance Company Limited, Branch Office- Shivani, Distt.- Shivani (M.P.), Through Its Divisional Manager, Divisional Office, Guru Kripa Towers, Vyapar Vihar Road, Bilaspur, Distt.- Bilaspur, Chhattisgarh**(Non-Applicant No.3)**

---- Appellant**Versus**

1. Ram Singh S/o Jivrakhan Yadav, Aged About 30 Years R/o Vill.- Jamkore, P.S. & Tah.- Mungeli, Distt.- Bilaspur, Chhattisgarh(Applicant No.1)
2. Sukala Bai W/o Ram Singh, Aged About 27 Years R/o Vill.- Jamkore, P.S. & Tah.- Mungeli, Distt.- Bilaspur, Chhattisgarh(Applicant No.2)
3. Dilip Kumar S/o Trikhram Lodho, Aged About 34 Years R/o Vill.- Avaljhari, P.S.- Bhakhelo, Distt.- Balaghat (M.P.) (Driver Of Truck)(Non-Applicant No.1)
4. Baldev Vaidya S/o Devichand Vaidya, Aged About 38 Years R/o Mahaveer Chowk Balaghat, P.S.- Balaghat, Distt.- Balaghat (M.P.) (Owner Of Truck No. M.P./22 B /1051)(Non-Applicant No.2)

---- Respondents

For appellant	: Shri Dashrath Gupta, Advocate.
For respondents	: None present

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****20.10.2016**

Heard on IA No.01/13, application for condonation of delay in filing the appeal as the instant appeal has been filed after 3924 days of its limitation.

2. Counsel for the appellant would submits that earlier against the impugned award passed on 23.7.2002 by the Additional Motor Accidents Claims Tribunal, Mungeli in Claim Case No.02/2000, the appellant has preferred MJC No.17/2003 under Section 151 and 152 of the Code of Civil Procedure, 1908 (for short the Code) for recalling of

the award dated 23.7.2002. After the dismissal of the said application, the appellant preferred Writ Petition No.1900 of 2004 under Article 227 of the Constitution of India. The appellant/petitioner had withdrawn the said writ petition with liberty to file an appeal. Thereafter the appellant preferred the instant appeal. Hence, the delay is bonafide and the same may be condoned and the the appeal may be admitted for consideration.

3. Perused the documents annexed along with the instant appeal.

4. For the relevance, Sections 151 and 152 of the Code is reproduced:-

“151. Saving of inherent powers of Court.- Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

152. Amendment of judgments, decrees or orders.- Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.”

5. Also Section 173 of the Motor Vehicles Act, 1988 is reproduced as under:-

“173. Appeals.- (1) Subject to the provisions of sub-section (2) any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be

entertained by the High Court unless he has deposited with it twenty-five thousand rupees or fifty per cent of the amount so awarded, whichever is less, in the manner directed by the the High Court.

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ten thousand rupees.”

6. As a settled law, inherent jurisdiction of the Court may be invoked only when there is no any forum left as per the provisions of law. It is also well settled that recalling of award does not fall under the error like clerical or arithmetical mistake in judgment, decree or order. As a settled law, after passing of the impugned award, under the relevant provisions of Motor Vehicles Act, the forum available with the appellant is under Section 173 of the Act. There is no justification why the appellant preferred a writ petition (227) against the order passed by the Tribunal in MJC No.17/03 for recalling of the award when the forum was very much available before him. This is also settled law that prayer for withdrawal of the petition with liberty to file appeal does not right over the limitation laws. In any case, the parties shall subject to the limitation law and by invoking the said jurisdiction, he has to satisfactorily explain the delay caused. In the considered view of this Court, time lapse of 3925 days in filing the instant appeal cannot be held as bonafidely spent for filing the MJC and thereafter WP(227) before this Court, when clear provisions and forum were available under Section 173 of the Act 1988.

7. On due consideration, I do not see any reason to condone the delay of 3924 days in filing the instant appeal. Consequently, IA No.01/13 is dismissed as not maintainable and also the instant appeal is dismissed as time barred.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE